

SUMMARY

OF

IOWA'S TOBACCO LAWS
(Updated May, 2004)

OVERVIEW OF INCLUDED MATERIAL

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SUMMARY OF IOWA'S TOBACCO LAWS

Prepared By:

Brian Meyer
Assistant Attorney General/
Legislative Liaison
Iowa Department of Justice
Telephone: (515) 281-6898
Facsimile: (515) 281-4209
bmeyer@ag.state.ia.us

RELEVANT DEFINITIONS:

Retail Permit: Cigarette permits issued to retailers by their local licensing authority.

Person: Every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver, or respective legal representative.

Cigarette Vending Machines: Any self-service device, that takes money and dispenses cigarettes or tobacco products.

Cigarettes: Any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, regardless of size or shape and regardless of the mix of ingredients. Cigars are excluded.

Tobacco Products: Cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smokeless tobacco, snuff, snuff flower, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Cigarettes are excluded from this definition.

COMPARISON OF THE NEW LAW AND THE OLD LAW

CIVIL PROSECUTION OF CIGARETTE PERMIT HOLDERS:

NEW LAW:

If a RETAILER or an EMPLOYEE of a RETAILER has committed any of the following violations: 453A.22(2)

- Sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to an individual under the age of 18. 453A.2(1)
- Had vending machines that contain cigarettes or tobacco products located in a place where persons under 18 are present or permitted AT ANY TIME. 453A.36(6)

The following penalties shall be assessed:

- 1st violation: \$300.00 fine. Failure to pay this penalty as ordered shall result in automatic suspension of the permit for 14 days. Iowa Code section 453A.22(2)(a).
- 2nd violation within 2 years: \$1,500.00 fine or 30 day suspension. Iowa Code section 453A.22(2)(b).
- 3rd violation within 3 years: \$1,500.00 fine and 30 day suspension. Iowa Code section 453A.22(2)(c).
- 4th violation within 3 years: \$1,500.00 fine and 60 day suspension. Iowa Code section 453A.22(2)(d).
- 5th violation within 4 years: Revocation. Iowa Code section 453A.22(2)(e).

OLD LAW:

- For a first violation, the retailer shall be assessed a civil penalty in the amount of \$300.00. Failure to pay this penalty as ordered shall result in automatic suspension of the permit for 14 days. Iowa Code section 453A.22(2)(a).
- For a second violation within a period of two years, the retailer's permit shall be

- suspended for a period of 30 days. Iowa Code section 453A.22(2)(b).
For a third violation within a period of three years, the retailer's permit shall be suspended for a period of 60 days. Iowa Code section 453A.22(2)(c).
- For a fourth violation within a period of three years, the retailer's permit shall be revoked. Iowa Code section 453A.22(2)(d).

NEW PROCEDURAL LAW

Local licensing authorities will have 60 days from the time the underlying violation of selling tobacco to a minor is adjudicated before assessing the civil penalty against the retailer. If local authorities fail to act within 60 days, the prosecution is automatically transferred to the state. See Iowa Code § 453A.2(6).

NEW AFFIRMATIVE DEFENSES

The new law provides that retailers may assert an affirmative defense of training as a bar to prosecution of the civil sanction for selling to a minor. To qualify, the employee who sold must have received training in a training program authorized by the Alcoholic Beverages Division. This defense can be asserted only once by a retailer at a particular retail location in a four-year period. See Iowa Code § 453A.22(4).

CIVIL PROSECUTION OF TOBACCO VIOLATIONS CHECKLIST:

Find out if there are violations in your jurisdiction:

- ✓ ABD will forward violations within your jurisdiction as they are reported by the law enforcement agency issuing the citations.
- ✓ Ask the county clerk's office to forward all criminal citations involving Iowa Code sections 453A.2(1) or 453A.36(6) that fall within the jurisdiction of the permit issuing authority.

Settlement Negotiations:

- ✓ Attempt to settle the case prior to scheduling a hearing before the permit issuing authority by serving a notice and hearing complaint by certified mail upon the cigarette permittee at the location of the business and address of the legal owner as found on cigarette permit application and sending the same notice and hearing complaint to the permit issuing authority (See sample).
 - ✓ Notice Cover
 - ✓ Hearing complaint
 - ✓ Copy of cigarette permit application
 - ✓ Copy of cigarette permit
 - ✓ Copy of criminal citation written: simple misdemeanor/scheduled violation Iowa Code section 453A.2(1) (obtained from the county clerk)
 - ✓ Copy of disposition from the criminal action
 - ✓ Acknowledgment and settlement agreement form
- ✓ The only acceptable settlements are the penalties prescribed by law:
 - ✓ 1st violation: \$300.00 fine
 - ✓ 2nd violation within 2 years: \$1,500.00 fine **or** 30 day suspension
 - ✓ 3rd violation within 3 years: \$1,500.00 fine **and** 30 day suspension
 - ✓ 4th violation within 3 years: \$1,500.00 fine **and** 60 day suspension
 - ✓ 5th violation within 4 years: Revocation

First Violation:

- ✓ If the permittee wishes to settle a 1st offense the settlement must be accompanied by:

- ✓ a signed acknowledgment/settlement agreement
- ✓ a \$300.00 check
- ✓ The agreement can then be presented with an order accepting the settlement to the issuing authority (see sample order).

Second Violation:

- ✓ If the permittee wishes to settle a second violation by 30 day suspension, the settlement must be presented to the issuing authority for the dates by which the suspension will be served (see sample order). If the permittee wishes to settle with a \$1,500.00 fine, the \$1,500.00 must be presented with the settlement agreement.

Third Violation:

- ✓ If the permittee wishes to settle a third violation by \$1,500.00 fine and 30 day suspension, the settlement must be presented to the issuing authority for the dates by which the suspension will be served (see sample order).

Fourth Violation:

- ✓ If the permittee wishes to settle a fourth violation by \$1,500.00 fine and a 60 day suspension, the settlement must be presented to the issuing authority for the dates by which the suspension will be served (see sample order).

Fifth Violation:

- ✓ If the permittee wishes to settle a fifth violation within four years by revocation, the settlement must be presented to the issuing authority for the revocation to be enforced.

Forfeiture:

- ✓ If the permittee wishes to voluntarily forfeit the permit in lieu of any of the above penalties, the forfeiture will be for no less than 1 year.

Hearing phase:

- ✓ Because these are civil penalties imposed administratively through the permit issuing authority, the permittee is afforded constitutional procedural due process rights: 1. Notice; 2. Opportunity to be heard. Procedural due process and other defenses have been raised and successfully overcome.

- ✓ Under Iowa Law two elements must be proven with substantial evidence to impose a civil penalty on a retailer for selling tobacco to a minor:
 - ✓ Sale to a minor
 - ✓ Sale made by permittee or employee of a permittee
- ✓ Before the scheduled hearing, obtain certified copies of:
 - ✓ cigarette permit
 - ✓ criminal citation
 - ✓ criminal disposition
- ✓ **For a second or subsequent violation a certified copy of the order pertaining to the first and/or subsequent violation from the issuing authority must be included in the evidence presented to prove a previous violation.**
- ✓ Present these certified copies of the above evidence to the council. Substantial evidence is necessary to prove a violation.

Post-hearing phase:

Obtain an order from the council and request the clerk of the permit issuing authority forward the order from the council to the prosecuting entity and the permit holder.

- ✓ For a first offense the fine must be paid or there is an automatic suspension of the permit for 14 days. The 14-day suspension is an additional penalty for not paying the assessed fine. It is not the alternative to the \$300.00 fine.
- ✓ Any appeal from a retailer of the decision by the city council/board of supervisors must be done by Writ of Certiorari through the district court.

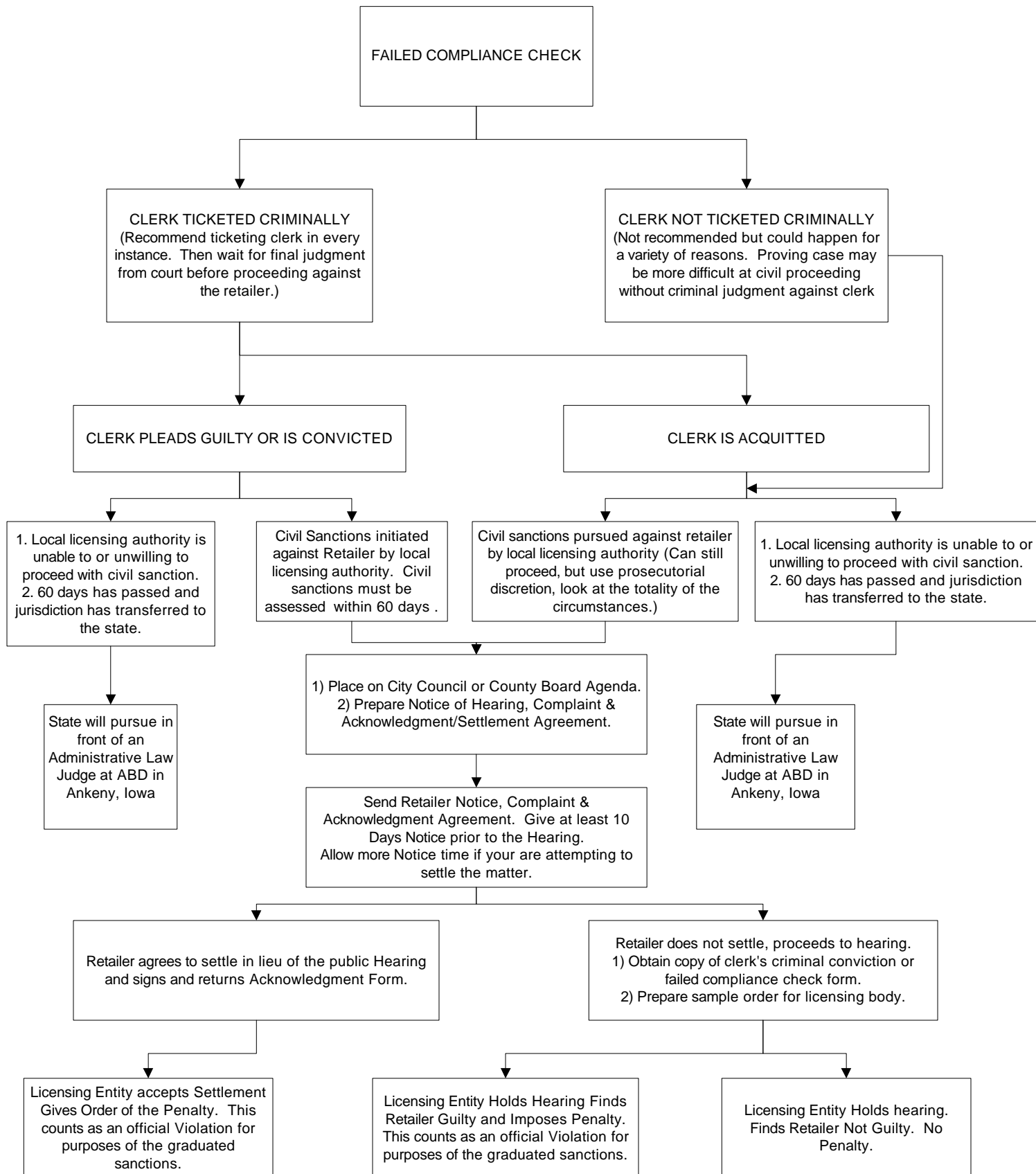
Failure to assess a civil penalty within 60 days of the adjudication of the criminal action will transfer jurisdiction to the State by operation of law. See Iowa Code section 453A.

TOBACCO PROSECUTION FLOW CHART **FOR CIVIL PROSECUTION OF** **CIGARETTE PERMIT HOLDERS**

- IMMEDIATELY AFTER A FAILED COMPLIANCE CHECK, THE CLERK SHOULD BE CRIMINALLY TICKETED.
- IT IS BEST TO WAIT FOR THE CLERK TO EITHER PLEAD GUILTY OR BE CONVICTED BEFORE PROCEEDING AGAINST THE RETAILER.
- THEN USE THIS CRIMINAL DISPOSITION FROM THE COURT AS THE EVIDENCE AGAINST RETAILER.
- REFER TO CASE AT END OF MANUAL ALLOWING VICARIOUS LIABILITY IN CIVIL PROCEEDING WHEN THERE HAS BEEN A CRIMINAL CONVICTION.

TOBACCO PROSECUTION FLOW CHART

Prepared by the Iowa Attorney General's Office
April, 2003



FREQUENTLY ASKED QUESTIONS **FOR CITIES AND COUNTIES PURSUING** **SANCTIONS AGAINST RETAILERS** **WHO HAVE SOLD CIGARETTES OR** **TOBACCO TO MINORS**

prepared by Donald D. Stanley, Jr., Assistant Attorney General
January 16, 2002
Revised April, 2003

1. Why are these cases being prosecuted in front of the local licensing bodies if prosecuted by local authorities?

In Iowa, cigarette permits are issued locally. Cities issue permits to retailers within their corporate limits. Counties issue permits to retailers in unincorporated areas. The only state issued retail permit is the one held by Amtrak for its club car that travels across several Iowa counties.

2. How long does a city have to decide whether it wants to prosecute?

Sixty days then jurisdiction transfers by operation of law.

3. Does the council have to impose the sanction?

Yes, if the council finds there was a violation of Iowa Code section 453A.2(1), selling or giving cigarettes or tobacco to a minor by a permit holder or employee of a permit holder, then Iowa Code section 453A.22(2)(a) requires that the permit holder SHALL be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation. Subsequent penalties for second through fifth violations are also mandatory under Iowa law.

- (a) Council needs to find a violation of 453A.2(1) was committed;
- (b) Council needs to impose the prescribed penalty.

4. Can the city suspend the sanction/fine?

No, the penalties are mandatory and the local licensing bodies have no authority to suspend or modify the fines or suspensions specifically outlined in the Iowa Code.

5. Will the State pursue the sanctions even if the local city or county attorney declines to do so?

Yes, if the local city or county attorney cannot or will not pursue the retail sanctions for whatever reason, (lack of resources, conflict, direction of local licensing body, etc.), the Iowa Attorney General's office will pursue the retail sanctions in front of an administrative law judge.

The Iowa Attorney General's office will act on behalf of the Iowa Alcoholic Beverages Division ("ABD") under authority granted by a 28E agreement reached between ABD and the Iowa Department of Public Health. The Health Department has authority to pursue violations before the local licensing body under Iowa Code section 453A.2(4).

Either the local City or County Attorney or the Attorney General will prosecute each violation of 453A.22.

6. Where does the fine money go?

If the city or county attorney prosecutes the case for the civil sanctions the fine is paid to the local licensing body. If the Attorney General's office prosecutes the case the fine is paid to the Treasurer, State of Iowa and deposited in the tobacco training and compliance fund.

7. How do I find out if there have been violations in my jurisdiction?

Check with local law enforcement if they conducted the compliance checks. If the State Patrol conducted the compliance checks, contact Nicole Gehl at the ABD at (515) 281-7641 or call Connie Larson at (515) 281-5846.

8. Where can I find sample forms?

<http://www.state.ia.us/government/ag/resources/index.html> or go to www.iowaattorneygeneral.org then scroll to the bottom of the screen to where it says resources. Click on resources and follow that page down to:

Tobacco Enforcement

Civil Prosecution Procedures & Laws for City and County Attorneys. Click on this and go to page that features "view entire document." Clicking on this document will open it and it may be printed or downloaded. If you need a hard copy of the prosecution manual, please call Connie Larson at (515) 281-5846 or e-mail at clarson@ag.state.ia.us.

9. If the retailer fails to pay, how do I collect?

If the retailer fails to pay the civil penalty, a judgment may be pursued in small claims court.

10. Is the \$300.00 fine applicable even if the retailer serves the 14 day suspension for not paying within thirty days after the sanction is imposed?

Serving the fourteen day suspension does not wipe out the obligation to pay the \$300.00 fine for a first offense. It is not an either-or proposition. The fourteen-day suspension is an additional penalty for not paying the fine in a timely manner.

11. What happens if the retailer has forfeited its permit or gone out of business?

If the retailer forfeited its cigarette permit or has gone out of business the local licensing body should still find the penalty and assess the sanction, however, the local authority may choose not to pursue the fine through the small claims court process.

12. What if the ownership of the retail business has changed since the citation was issued?

If there is new ownership, the new owners cannot be held liable for a violation that occurred before they were the owners of the business. It also may be impossible to pursue sanctions against the former owners if they no longer hold a permit. This is a reason to pursue violations in the most timely fashion possible.

13. What rules apply for the hearing?

Most importantly, defendants are entitled to ten days notice and an opportunity to be heard according to Iowa Code section 453A.22. Defendants may be represented by legal counsel at their own expense. Hearsay rules do not apply to the hearing because the sanctions are administrative not criminal.

14. What are some common defenses and how do I rebut?

Honest Mistake – Retailer claims to have made one honest mistake with no intention to make a sale to a minor.

In most cases, this is probably true. However, the Iowa Code does not have an exception to the prescribed penalty for those retailers who just made a mistake. Having the intent to sell is not an element of this offense. The only two elements are: 1) a minor was given or sold cigarettes or tobacco 2) by the permit holder or an employee of the permit holder.

Vicarious Liability – Retailer claims it is wrong for it to be held liable for the mistake of the clerk. This defense is often combined with evidence that the retailer trained and instructed the employee to check identification before selling cigarettes and tobacco products.

The Iowa Code prescribes this vicarious liability by not only providing a penalty to the person that makes the sale (453A.3(1)(b)), but also to the retailer (453A.22(2)). Iowa case law supports the imposition of these penalties. See *Randall's Intl Inc. v. Iowa Liquor Control Dept.*, 429 N.W.2d 163.

Non-profit Organization – Retailer claims it is a nonprofit business that does good works for the community.

The Iowa Code makes no distinction for nonprofit businesses. These permit-holders have the same responsibilities and must face the same penalties as other businesses where a sale is made.

Good Corporate Citizen – Some businesses believe they should get a break because they are good corporate citizens. They employ a lot of people, pay a lot of taxes and support various community projects.

While all of these things are commendable, again the Iowa Code does not allow for different or reduced penalties for good corporate citizens.

Entrapment – Some defendants claim the use of undercover youth attempting to purchase cigarettes is entrapment.

However, the Iowa Supreme Court has ruled that the use of undercover youths in alcohol stings is not entrapment. See *Jim O. Inc. v. City of Cedar Rapids*, 587 N.W.2d 476.

Fake ID – Some defendants claim the undercover youth used a Fake ID when trying to purchase the cigarettes.

All the youth participating in the program use their real identification. The law enforcement partners examine the identification before and after the sting is completed.

The only affirmative defense is for training. It can be used only once within a four year period.

15. Under what circumstances may a retailer assert the affirmative defense of training?

If the employee who sold received training and if the training was substantially similar to the training offered by the ABD the retailer may assert the defense. After April 11, 2004, the employee must have received training from an authorized ABD program. A retailer may assert this defense only once in a four year period.

16. May a retailer assert the affirmative defense of training for violations that occurred before the new law was enacted?

No. The defense may only be asserted for new violations of the law.

17. For the affirmative defense, how does the licensing authority calculate the four year period?

The four year period begins on the date the affirmative defense is asserted.

18. Does the retailer have the right to appeal the decision of the council?

The only avenue of appeal is filing a Writ of Certiorari with the district court if the defendant argues the decision of the city council was illegal.

19. What if the criminal citation was dismissed, a deferred judgment was given, or the defendant in the criminal trial was found not guilty?

Civil sanctions can be pursued independently of what happens with the criminal prosecution of the clerk. Whether or not sanctions are pursued depend on whether a sale was made to a minor.

20. Does a retailer need to remove cigarette and tobacco products from its shelves while serving a suspension of its license?

No, but the retailer may want to remove the product for its own protection. If a sale is made (even to an adult) while a business is under suspension, the retailer faces more penalties.

SAMPLE NOTICES OF HEARING

1st, 2nd, 3rd, 4TH & 5th

VIOLATIONS

NOTICES OF HEARING SHOULD BE SENT TO PERMIT HOLDER GIVING AT LEAST TEN DAYS NOTICE PRIOR TO HEARING DATE.

MORE NOTICE TIME IS RECOMMENDED WHEN ATTEMPTING TO SETTLE.

INCLUDE WITH NOTICE, THE COMPLAINT AND THE SETTLEMENT/ACKNOWLEDGMENT AGREEMENT.

SAMPLE NOTICE OF HEARING

1st VIOLATION

Permit Holder
Address
City, Iowa Zip

Re: *Retail Business Name*
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 20xx, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory \$300.00 civil penalty prescribed by Iowa Code section 453A.22(2)(a) for the violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, address, no later than ten (10) business days prior to the hearing date. With this Acknowledgment/Settlement Agreement, you must include a check in the amount of \$300.00, made out to the "City or County". This will satisfy the penalty for a first violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (xxx) xxx-xxxx, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

CITY OR COUNTY ATTORNEY
Address
(xxx) xxx-xxx

SAMPLE NOTICE OF HEARING 2nd VIOLATION

Permit Holder
Address
City, Iowa Zip

Re: *Retail Business Name*
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 20xx, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory civil penalty of a \$1,500.00 fine or a 30 day cigarette permit suspension prescribed by Iowa Code section 453A.22(2)(b) for the violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, address, no later than ten (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment/Settlement Agreement will satisfy the penalty for a second violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (xxx) xxx-xxxx, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

CITY OR COUNTY ATTORNEY
Address
(xxx) xxx-xxx

SAMPLE NOTICE OF HEARING 3rd VIOLATION

Permit Holder
Address
City, Iowa Zip

Re: *Retail Business Name*
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 20xx, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory civil penalty of a \$1,500.00 fine and a 30 day cigarette permit suspension prescribed by Iowa Code section 453A.22(2)(c) for the violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, address, no later than ten (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment/Settlement Agreement will satisfy the penalty for a third violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (xxx) xxx-xxxx, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

CITY OR COUNTY ATTORNEY
Address
(xxx) xxx-xxx

SAMPLE NOTICE OF HEARING 4th VIOLATION

Permit Holder
Address
City, Iowa Zip

Re: *Retail Business Name*
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 20xx, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory civil penalty of a \$1,500.00 fine and a 60 day cigarette permit suspension prescribed by Iowa Code section 453A.22(2)(d) for the violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, address, no later than ten (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment/Settlement Agreement will satisfy the penalty for a fourth violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (xxx) xxx-xxxx, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

CITY OR COUNTY ATTORNEY
Address
(xxx) xxx-xxx

SAMPLE NOTICE OF HEARING 5th VIOLATION

Permit Holder
Address
City, Iowa Zip

Re: *Retail Business Name*
Retail Business Address
City, Iowa Zip

The CITY or COUNTY has scheduled a hearing before the City Council or County Board of Supervisors at Time on Day of Week, Month, Day, 20xx, City Council Chambers or County Supervisors' Board Room. The hearing complaint, which has been filed against you, is attached.

If you or your representative fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the mandatory revocation of your cigarette permit prescribed by Iowa Code section 453A.22(2)(e) for the violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to City or County Attorney, address, no later than ten (10) business days prior to the hearing date. Accepting and abiding by the terms of the Acknowledgment/Settlement Agreement will satisfy the penalty for a fifth violation under Iowa Code section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (xxx) xxx-xxxx, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

CITY OR COUNTY ATTORNEY
Address
(xxx) xxx-xxx

SAMPLE HEARING COMPLAINTS

1st, 2nd, 3rd, 4TH & 5th

VIOLATIONS

SEND HEARING COMPLAING ALONG WITH NOTICE OF HEARING LETTER
AND ACKNOWLEDGMENT/SETTLEMENT AGREEMENT.

SAMPLE HEARING COMPLAINT

1st VIOLATION

IN RE:	:	Legal Name
<i>Permit Holder</i>	:	Legal Address
<i>Address</i>	:	(Obtained from permit)
<i>City, Iowa Zip</i>	:	HEARING COMPLAINT

The **CITY OR COUNTY** hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”

2. Iowa Code section 453A.22(2)(a) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2(1), the permit holder shall be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation of Iowa Code section 453A.2(1).

3. On or about *Month, Day, 20xx*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. Therefore, in accordance with Iowa law, the **CITY OR COUNTY** requests the *Blank City Council or the Blank County Board of Supervisors* find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty in the amount of three hundred dollars (\$300.00) against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY

Address

Phone

SAMPLE HEARING COMPLAINT 2nd VIOLATION

IN RE:	:	Legal Name
<i>Permit Holder</i>	:	Legal Address
<i>Address</i>	:	(Obatined from permit)
<i>City, Iowa Zip</i>	:	HEARING COMPLAINT

The **CITY OR COUNTY** hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”

2. Iowa Code section 453A.22(2)(b) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2(1), the permit holder shall be assessed a civil penalty of a one thousand, five hundred dollars (\$1,500.00) fine or a thirty day cigarette permit suspension for a second violation of Iowa Code section 453A.2(1) within two years.

3. On or about *Month, Day, 20xx*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2.

5. Therefore, in accordance with Iowa law, the **CITY OR COUNTY** requests the

Blank City Council or the Blank County Board of Supervisors find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty in the amount of a one thousand, five hundred dollars (\$1,500.00) fine or a thirty day cigarette permit suspension against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY

Address

Phone

SAMPLE HEARING COMPLAINT 3rd VIOLATION

IN RE:	:	Legal Name
<i>Permit Holder</i>	:	Legal Address
<i>Address</i>	:	(Obtained from permit)
<i>City, Iowa Zip</i>	:	HEARING COMPLAINT

The **CITY OR COUNTY** hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”

2. Iowa Code section 453A.22(2)(c) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2(1), the permit holder shall be assessed a civil penalty of a one thousand, five hundred dollars (\$1,500.00) fine and a thirty day cigarette permit suspension for a third violation of Iowa Code section 453A.2(1) within three years.

3. On or about *Month, Day, 20xx*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a second violation of Iowa Code section 453A.2.

5. Therefore, in accordance with Iowa law, the **CITY OR COUNTY** requests the **Blank City Council or the Blank County Board of Supervisors** find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty in the amount of a one thousand, five hundred dollars (\$1,500.00) fine and a thirty day cigarette permit suspension against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY

Address

Phone

SAMPLE HEARING COMPLAINT

4th VIOLATION

IN RE:	:	Legal Name
<i>Permit Holder</i>	:	Legal Address
<i>Address</i>	:	(Obtained from permit)
<i>City, Iowa Zip</i>	:	HEARING COMPLAINT

The **CITY OR COUNTY** hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”

2. Iowa Code section 453A.22(2)(d) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2(1), the permit holder shall be assessed a civil penalty of a one thousand, five hundred dollars (\$1,500.00) fine and a sixty day cigarette permit suspension for a fourth violation of Iowa Code section 453A.2(1) within three years.

3. On or about *Month, Day, 20xx*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a second violation of Iowa Code section 453A.2. On *Month, Day, Year*, the

permittee was issued a sanction for a third violation of Iowa Code section 453A.2.

5. Therefore, in accordance with Iowa law, the **CITY OR COUNTY** requests the Blank City Council or the Blank County Board of Supervisors find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty in the amount of a one thousand, five hundred dollars (\$1,500.00) fine and a sixty day cigarette permit suspension against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY

Address

Phone

SAMPLE HEARING COMPLAINT 5th VIOLATION

IN RE:	:	Legal Name
<i>Permit Holder</i>	:	Legal Address
<i>Address</i>	:	(Obtained from permit)
<i>City, Iowa Zip</i>	:	HEARING COMPLAINT

The **CITY OR COUNTY** hereby makes the following complaint against the above-named permittee.

1. Iowa Code section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”

2. Iowa Code section 453A.22(2)(e) provides that if a permit holder or employee of a permit holder has violated Iowa Code section 453A.2(1), the permit holder shall be assessed a civil penalty of a cigarette permit revocation for a fifth violation of Iowa Code section 453A.2(1) within four years.

3. On or about *Month, Day, 20xx*, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the *Compliance Check or Criminal Conviction* is attached and incorporated herein.

4. On *Month, Day, Year*, the permittee was issued a sanction for a first violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a second violation of Iowa Code section 453A.2. On *Month, Day, Year*, the permittee was issued a sanction for a third violation of Iowa Code section 453A.2. On

Month, Day, Year, the permittee was issued a sanction for a fourth violation of Iowa Code section 453A.2.

5. Therefore, in accordance with Iowa law, the **CITY OR COUNTY** requests the *Blank City Council* or the *Blank County Board of Supervisors* find a violation of the above-referenced sections of Iowa Code chapter 453A and assess a civil penalty of a cigarette permit revocation against *Blank (the retail permit-holder)*.

CITY OR COUNTY ATTORNEY

Address

Phone

**SAMPLE ACKNOWLEDGMENT/
SETTLEMENT AGREEMENTS**
1st, 2nd, 3rd, 4TH & 5th
VIOLATIONS

SEND ACKNOWLEDGMENT/SETTLEMENT AGREEMENT ALONG WITH THE
HEARING COMPLAINT AND THE NOTICE OF HEARING LETTER.

SAMPLE ACKNOWLEDGMENT/SETTLEMENT AGREEMENT 1st VIOLATION

IN RE:	:	Legal Name
	:	Legal Address
<i>Permit Holder</i>	:	(Obtained from permit)
<i>Address</i>	:	ACKNOWLEDGMENT/
<i>City, Iowa Zip</i>	:	SETTLEMENT AGREEMENT

ACKNOWLEDGMENT/SETTLEMENT AGREEMENT

I (We) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (We) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (We) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (We) understand that this violation dated XXX will count as an official "First Violation" of Iowa Code section 453A.2 pursuant to Iowa Code section 453A.22. I (We) have enclosed a check for the amount of \$300.00 made payable to the "CITY OR COUNTY" to settle the above referenced complaint.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT/SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated, along with your \$300.00 check made payable to the "CITY OR COUNTY", should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

SAMPLE ACKNOWLEDGMENT/SETTLEMENT AGREEMENT 2nd VIOLATION

IN RE:	:	Legal Name
	:	Legal Address
<i>Permit Holder</i>	:	(Obtained from permit)
<i>Address</i>	:	ACKNOWLEDGMENT/
<i>City, Iowa Zip</i>	:	SETTLEMENT AGREEMENT

ACKNOWLEDGMENT/SETTLEMENT AGREEMENT

I (We) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (We) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (We) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (We) understand that this violation dated XXX will count as an official "Second Violation" of Iowa Code section 453A.2 pursuant to Iowa Code section 453A.22. I (We) understand that the penalty for this second violation is a \$1,500.00 fine or a suspension of my (our) cigarette permit for 30 days, beginning on the date that will be specified in the official city/county order that I will receive.

_____	_____
_____	_____

DATE

In accordance with Iowa Code section 453A.22(2)(b), the above-captioned permittee chooses the following penalty:

G \$1,500.00 fine

G 30 day suspension

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT/SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated as well as a check in the amount of \$1,500.00 (if choice of penalty is fine) should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

SAMPLE ACKNOWLEDGMENT/SETTLEMENT AGREEMENT 3rd VIOLATION

IN RE:	:	Legal Name
	:	Legal Address
<i>Permit Holder</i>	:	(Obtained from permit)
<i>Address</i>	:	ACKNOWLEDGMENT/
<i>City, Iowa Zip</i>	:	SETTLEMENT AGREEMENT

ACKNOWLEDGMENT/SETTLEMENT AGREEMENT

I (We) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (We) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (We) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (We) understand that this violation dated XXX will count as an official "Third Violation" of Iowa Code section 453A.2 pursuant to Iowa Code section 453A.22. I (We) understand that the penalty for this third violation is a \$1,500.00 fine and a suspension of my (our) cigarette permit for 30 days, beginning on the date that will be specified in the official city/county order that I will receive.

_____	_____
_____	_____

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT/SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated along with a check in the amount of \$1,500.00

should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

SAMPLE ACKNOWLEDGMENT/SETTLEMENT AGREEMENT 4th VIOLATION

IN RE:	:	Legal Name
	:	Legal Address
<i>Permit Holder</i>	:	(Obtained from permit)
<i>Address</i>	:	ACKNOWLEDGMENT/
<i>City, Iowa Zip</i>	:	SETTLEMENT AGREEMENT

ACKNOWLEDGMENT/SETTLEMENT AGREEMENT

I (We) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (We) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (We) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (We) understand that this violation dated XXX will count as an official "Fourth Violation" of Iowa Code section 453A.2 pursuant to Iowa Code section 453A.22. I (We) understand that the penalty for this fourth violation is a \$1,500.00 fine and a suspension of my (our) cigarette permit for 60 days, beginning on the date that will be specified in the official city/county order that I will receive.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT/SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated along with a check in the amount of \$1,500.00

should be returned to: CITY OR COUNTY ATTORNEY, ADDRESS.

SAMPLE ACKNOWLEDGMENT/SETTLEMENT AGREEMENT 5th VIOLATION

IN RE:	:	Legal Name
	:	Legal Address
<i>Permit Holder</i>	:	(Obtained from permit)
<i>Address</i>	:	ACKNOWLEDGMENT/
<i>City, Iowa Zip</i>	:	SETTLEMENT AGREEMENT

ACKNOWLEDGMENT/SETTLEMENT AGREEMENT

I (We) hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I (We) hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I (We) hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I (We) understand that this violation dated XXX will count as an official "Fifth Violation" of Iowa Code section 453A.2 pursuant to Iowa Code section 453A.22. I (We) understand that the penalty for this fifth violation is revocation of my (our) cigarette permit, beginning on the date that will be specified in the official city/county order that I will receive. I (We) understand that no individual may apply for a new cigarette permit for this location (*address*) until at least one year has passed, unless good cause can be shown to the contrary.

DATE

NOTE: This must be signed by an individual cigarette permittee, or in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this ACKNOWLEDGMENT/SETTLEMENT AGREEMENT and waive your appearance at a hearing, this document, properly signed and dated should be returned to: CITY OR COUNTY

ATTORNEY, ADDRESS.

SAMPLE ORDERS TO PLACE
BEFORE COUNCIL OR BOARD
ACCEPTING AGREEMENT
1st, 2nd, 3rd, 4th & 5th
VIOLATIONS

AFTER RECEIVING SIGNED SETTLEMENT AGREEMENT, PLACE ORDER
BEFORE COUNCIL OR BOARD ACCEPTING AGREEMENT.

**SAMPLE ORDER ACCEPTING
ACKNOWLEDGMENT/SETTLEMENT AGREEMENT
1ST VIOLATION**

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ACCEPTING
<i>City, Iowa Zip</i>	:	ACKNOWLEDGMENT/SETTLEMENT
	:	AGREEMENT
	:	FIRST VIOLATION

On this _____ day of _____, 20xx, in lieu of a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* approves the attached Acknowledgment/Settlement Agreement between the above-captioned permittee and the CITY OR COUNTY.

THEREFORE, the _____ *City Council* / _____ *County Board of Supervisors*, FINDS that the above captioned permittee has remitted to the "CITY OR COUNTY" a civil penalty in the amount of three hundred dollars (\$300.00). Be advised that this violation dated XXX will count as a first violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(a). IT IS THEREFORE ORDERED that the judgment in this matter is hereby satisfied.

Mayor or Chairperson of the Board of Supervisors

**SAMPLE ORDER ACCEPTING
ACKNOWLEDGMENT/SETTLEMENT AGREEMENT
2nd VIOLATION**

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ACCEPTING
<i>City, Iowa Zip</i>	:	ACKNOWLEDGMENT/SETTLEMENT
	:	AGREEMENT
	:	SECOND VIOLATION

On this _____ day of _____, 20xx, in lieu of a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* approves the attached Acknowledgment/Settlement Agreement between the above-captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of a one thousand, five hundred dollars (\$1,500.00) fine be accepted or a thirty (30) day cigarette permit suspension be executed against the above-captioned permittee effective (xyz future date). This violation dated XXX will count as a second violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(b).

Mayor or Chairperson of the Board of Supervisors

**SAMPLE ORDER ACCEPTING
ACKNOWLEDGMENT/SETTLEMENT AGREEMENT
3rd VIOLATION**

BEFORE THE _____ *CITY COUNCIL OR*
THE _____ *COUNTY BOARD OF SUPERVISORS*

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ACCEPTING
<i>City, Iowa Zip</i>	:	ACKNOWLEDGMENT/SETTLEMENT
	:	AGREEMENT
	:	THIRD VIOLATION

On this _____ day of _____, 20xx, in lieu of a public hearing on the matter, the _____ *City Council /* _____ *County Board of Supervisors* approves the attached Acknowledgment/Settlement Agreement between the above-captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of a one thousand, five hundred dollars (\$1,500.00) fine and a thirty (30) day cigarette permit suspension be executed against the above-captioned permittee effective (xyz future date). This violation dated XXX will count as a third violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(c).

Mayor or Chairperson of the Board of Supervisors

**SAMPLE ORDER ACCEPTING
ACKNOWLEDGMENT/SETTLEMENT AGREEMENT
4th VIOLATION**

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ACCEPTING
<i>City, Iowa Zip</i>	:	ACKNOWLEDGMENT/SETTLEMENT
	:	AGREEMENT
	:	FOURTH VIOLATION

On this _____ day of _____, 20xx, in lieu of a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* approves the attached Acknowledgment/Settlement Agreement between the above-captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of a one thousand, five hundred dollars (\$1,500.00) fine and a sixty (60) day cigarette permit suspension be executed against the above-captioned permittee effective (*xyz future date*). This violation dated XXX will count as a fourth violation of Iowa Code section 453A.2(1) pursuant to Iowa Code section 453A.22(2)(d).

Mayor or Chairperson of the Board of Supervisors

**SAMPLE ORDER ACCEPTING
ACKNOWLEDGMENT/SETTLEMENT AGREEMENT
5th VIOLATION**

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ACCEPTING
<i>City, Iowa Zip</i>	:	ACKNOWLEDGMENT/SETTLEMENT
	:	AGREEMENT
	:	FIFTH VIOLATION

On this _____ day of _____, 20xx, in lieu of a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* approves the attached Acknowledgment/Settlement Agreement between the above-captioned permittee and the CITY OR COUNTY.

Pursuant to the Agreement, IT IS THEREFORE ORDERED that a civil penalty of cigarette permit REVOCATION be executed against the above-captioned permittee effective (xyz future date). Furthermore, it is ordered that no person or entity be granted a new cigarette permit for this location (address) until at least one (1) year has passed, unless good cause to the contrary can be shown. This violation dated XXX will count as a fifth violation of Iowa Code section 453A.2(1) pursuant to Iowa Code section 453A.22(2)(e).

Mayor or Chairperson of the Board of Supervisors

SAMPLE LETTER TO PLACE
BEFORE COUNCIL OR BOARD
WITH ORDER ACCEPTING
AGREEMENT

AFTER RECEIVING A SIGNED ACKNOWLEDGMENT/SETTLEMENT AGREEMENT, THIS LETTER CAN BE SENT TO THE COUNCIL OR BOARD ALONG WITH THE AGREEMENT AND THE PROPOSED ORDER.

Date

RE:
Permittee
Address
City, State Zip

Dear City Council/County Board of Supervisors:

I have received a signed Acknowledgment/Settlement Agreement regarding the violation of tobacco laws by the above-captioned permittee. A copy is enclosed for your records.

I have also enclosed an Order form, accepting this agreement in lieu of a public hearing and concluding this matter. Please approve and sign this Order at your next regularly scheduled meeting. The Original signed order should then be sent to the permit holder. A copy should be returned to me, City or County Attorney, Address.

Thank you for your assistance. Please call if you have any questions at 555-5555.

Sincerely,

City or County Attorney

Enclosure

SAMPLE ORDERS TO PLACE
BEFORE COUNCIL OR BOARD
ASSESSING PENALTIES AFTER
CONTESTED HEARINGS
1st, 2nd, 3rd, 4th & 5th
VIOLATIONS

THESE ORDERS MAY BE PLACED BEFORE THE COUNCIL OR BOARD
AFTER A CONTESTED HEARING.

SAMPLE ORDER ASSESSING PENALTY 1ST VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ASSESSING PENALTY
<i>City, Iowa Zip</i>	:	FIRST VIOLATION

On this _____ day of _____, 20xx, after a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above-captioned permittee committed a violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the _____ *City Council* / _____ *County Board of Supervisors*, hereby orders that a civil penalty in the amount of \$300.00 be remitted by the above-captioned permittee, to the CITY OR COUNTY, check made payable to the "CITY OR COUNTY" on or before *month, day*, 20xx (30 days from the date of this order). This sanction will count as a first violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(a). Be advised that failure to pay the civil penalty by this date shall result in the automatic permit suspension for a period of fourteen (14) days in addition to the \$300.00 fine.

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY 2nd VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ASSESSING PENALTY
<i>City, Iowa Zip</i>	:	SECOND VIOLATION

On this _____ day of _____, 20xx, after a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above-captioned permittee committed a second violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the _____ *City Council* / _____ *County Board of Supervisors*, hereby orders that a civil penalty of a thirty (30) day cigarette permit suspension or a \$1,500.00 fine be executed against the above-captioned permittee effective (*xyz future date*). This sanction will count as a second violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(b).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY 3rd VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ASSESSING PENALTY
<i>City, Iowa Zip</i>	:	THIRD VIOLATION

On this _____ day of _____, 20xx, after a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above-captioned permittee committed a third violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the _____ *City Council* / _____ *County Board of Supervisors*, hereby orders that a civil penalty of a \$1,500.00 fine and a thirty (30) day cigarette permit suspension be executed against the above-captioned permittee effective (*xyz future date*). This sanction will count as a third violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(c).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY 4th VIOLATION

BEFORE THE _____ *CITY COUNCIL OR*
THE _____ *COUNTY BOARD OF SUPERVISORS*

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ASSESSING PENALTY
<i>City, Iowa Zip</i>	:	FOURTH VIOLATION

On this _____ day of _____, 20xx, after a public hearing on the matter, the _____ *City Council /* _____ *County Board of Supervisors* finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above-captioned permittee committed a fourth violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the _____ *City Council /* _____ *County Board of Supervisors*, hereby orders that a civil penalty of a \$1,500.00 fine and a sixty (60) day cigarette permit suspension be executed against the above-captioned permittee effective (*xyz future date*). This sanction will count as a fourth violation of Iowa Code section 453A.2(1), pursuant to Iowa Code section 453A.22(2)(d).

Mayor or Chairperson of the Board of Supervisors

SAMPLE ORDER ASSESSING PENALTY 5th VIOLATION

BEFORE THE _____ CITY COUNCIL OR
THE _____ COUNTY BOARD OF SUPERVISORS

IN RE:	:	Legal Name
	:	Legal Address
<i>Retailer</i>	:	(Obtain from permit)
<i>Address</i>	:	ORDER ASSESSING PENALTY
<i>City, Iowa Zip</i>	:	FIFTH VIOLATION

On this _____ day of _____, 20xx, after a public hearing on the matter, the _____ *City Council* / _____ *County Board of Supervisors* finds that based upon evidence submitted by the CITY OR COUNTY Attorney's Office, the above-captioned permittee committed a fifth violation of Iowa Code section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

THEREFORE, the _____ *City Council* / _____ *County Board of Supervisors*, hereby orders that a civil penalty of cigarette permit REVOCATION be executed against the above-captioned permittee effective (xyz future date).

Furthermore, it is ordered that no person or entity be granted a new cigarette permit for this location (address) until at least one (1) year has passed, unless good cause to the contrary can be shown.

Mayor or Chairperson of the Board of Supervisors

OTHER RELEVANT TOBACCO LAWS

CRIMINAL PROSECUTION OF PERSONS OTHER THAN A RETAILER (ADULTS):

A person, OTHER THAN A RETAILER, who sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to any individual under the age of 18, is guilty of a simple misdemeanor. 453A.3(1)(a).

CIVIL PROSECUTION OF PERSONS UNDER 18:

A PERSON under 18 years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes. 453A.2(2). NOTE: a court appearance is required for these violations because of the community work requirements. Note: the juvenile court does not have jurisdiction.

- For a first violation, the fine is \$50. 805.8(11)(c)(1). And performance of 8 hours of community work requirements, unless this is waived by the court. 453A.3(2)(b).
- For a second violation, the fine is \$100. 805.8(11)(c)(2). And performance of 12 hours of community work requirements. 453A.3(2)(c). There is no provision that allows for a waiver of community work requirements on the second offense.
- For a third or subsequent violation, the fine is \$250. 805.8(11)(c)(3). And the performance of 16 hours of community work requirements. 453A.3(2)(d). There is no provision that allows for a waiver of community work requirements on the third or subsequent offense.

All of these penalties are CIVIL, not criminal. Also, the criminal penalty surcharge under 911.2 cannot be imposed for these violations. In addition, court costs pursuant to 805.9(6) cannot be imposed. 805.8(11)(c).

CRIMINAL PROSECUTION OF PERSONS UNDER 18:

A PERSON under 18 years of age who alters or displays or has in their possession a fictitious or fraudulently altered driver's license or a non-operator's id card, and who uses this license or card to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, or cigarettes, commits a simple misdemeanor punishable by a fine of \$100. 321.216C.

- An employer of a retailer who reasonably believes they have been presented with a false or altered license or I.D. may seize it. If they do this, they then must attempt to issue a receipt to the person listing that time and date. Furthermore, they must then turn it over to their local law enforcement officials within 24 hours. 453A.4(1).

IMMUNITY FOR PERSONS UNDER 18:

A PERSON under 18 years of age who possesses cigarettes or tobacco products as part of their employment, does not commit a violation if the employer has a valid cigarette permit or lawfully offers for sale cigarettes or tobacco products. 453A.2(3). (Note: This immunity is limited to a minor being able to possess cigarettes or tobacco products as part of their employment. The minor is still liable criminally if he or she sells to minors.)

A PERSON under 18 years of age who participates in compliance checks of retailers under the supervision of a "peace officer" does not commit a violation. 453A.2(6).

- The definition of a peace officer is listed in 801.4. As well as in 453A.2(4).

CRIMINAL PROSECUTIONS OF EMPLOYEES OF A RETAILER:

1. These penalties have remained the same.
2. An EMPLOYEE of a retailer who sells, gives, or otherwise supplies any tobacco, tobacco products, or cigarettes to any individual under the age of 18, is guilty of a simple misdemeanor. 453A.3(1)(b).
 - The scheduled penalty fine is set out in 805.8(11)(b)
 - (1) For a first violation, the scheduled fine is \$100
 - (2) For a second violation, the scheduled fine is \$250
 - (3) For a third or subsequent violation, the scheduled fine is \$500

Relevant Case Law

- Randall's Intern. Inc. v. Hearing Bd. of Iowa Beer & Liquor Control Dept., 429 N.W.2d 163 (Iowa 1988) (Finding imposition of civil sanctions against employer's licences for employee's misconduct does not violate due process).
- State v. Casey's General Stores Inc., 587 N.W.2d 599 (Iowa 1998) (Finding imposition of criminal sanctions against employer's licences for employee's misconduct does violate due process).
- Jim O. Inc. v. City of Cedar Rapids, 587 N.W.2d 476 (Iowa 1998) (Finding undercover stings using underage youth does not constitute entrapment).

ROLE OF OTHERS: CITY CLERKS, COUNTY AUDITORS; COUNTY CLERKS; LAW ENFORCEMENT

One challenge facing successful civil prosecution on the local level is the exchange of information available for the city clerks and county auditors/board secretaries(local jurisdictions). Good communication becomes even more imperative under the new law where local jurisdictions have 60 days from the date of the adjudication of the criminal offense before the jurisdiction transfers to the state by operation of law.

1. The local jurisdiction is sometimes unaware that there is a violation under 453A.2(1).

- While the sting operations often involve a local law enforcement entity e.g. city police or county sheriff, the information sometimes is not passed on to the local jurisdiction and decision-makers within that jurisdiction. The Iowa Department of Justice and Alcohol Beverages Division (ABD) will attempt to overcome this challenge by mailing a notice of violation to the proper jurisdiction.

2. The local jurisdiction is sometimes unaware of the adjudication of the criminal simple misdemeanor stemming from the violation of 453A.2(1).

- The local permit issuing authority should make arrangements with the county clerk's office to exchange information about the violations and the subsequent judicial process. The timetable for the adjudication of a simple misdemeanor varies depending on the defendant. A defendant may dispose of a 453A.2(1) criminal citation on the day of the offense or if the judicial process is extended, it may be several months before there is a criminal adjudication.

3. The Attorney General's office keeps a state-wide database of all of the violations of 453A.2(1) and the outcome of the subsequent civil prosecution of the retailers.

- The local permit issuing authority should inform the Attorney General's office when a civil prosecution has been undertaken or when a retailer uses its 1 affirmative defense in a 4 year period.